

AMENDED IN ASSEMBLY AUGUST 4, 2004

AMENDED IN ASSEMBLY JUNE 30, 2004

AMENDED IN ASSEMBLY JUNE 21, 2004

AMENDED IN ASSEMBLY JUNE 17, 2004

AMENDED IN SENATE MAY 11, 2004

AMENDED IN SENATE APRIL 29, 2004

AMENDED IN SENATE APRIL 26, 2004

SENATE BILL

No. 1682

Introduced by Senators Ducheny and Speier
(Principal coauthor: Senator Oller)
(Coauthors: Senators Dunn and Sher)
(Coauthors: Assembly Members Kehoe and Steinberg)

February 20, 2004

~~An act to amend Sections 1353.6, 1363, 1365.1, 1365.2, and 1367.1, to add Section 1367.4 to, and to repeal Section 1366.3 of, the Civil Code, and to amend Sections 116.540 and 703.010 of, and to add Section 729.035 to, the Code of Civil Procedure, relating to common interest developments. An act to amend Sections 1353.6, 1363, 1365.1, 1365.2, and 1367.1 of, to add Section 1367.4 to, and to repeal Section 1366.3 of, the Civil Code, and to amend Section 116.540 of, and to add Section 729.035 to, the Code of Civil Procedure, relating to common interest developments.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1682, as amended, Ducheny. Common interest developments.

(1) Existing law defines and regulates common interest developments and prohibits the governing documents of a common interest development from prohibiting the displaying of certain noncommercial signs, posters, flags, or banners, in an owner's separate interest, as specified.

This bill would extend the provisions described above to an owner's exclusive use common area.

(2) Existing law requires that members of a common interest development association have access to the association records, including accounting books and membership lists, as specified.

This bill would provide that, upon a court finding that a request to copy or inspect was unlawfully denied, a member is entitled to reasonable attorney's fees and court costs, and that the court may impose a civil penalty of up to \$500 per violation.

(3) Existing law requires the managing association of a common interest development to make the accounting books and records and the minutes of proceedings of the association available for inspection and copying by a member of the association, or the member's designated representative, as specified.

This bill would revise the provisions described above to have them apply to all association records, as defined, including contracts to which the association is or has been a party. The bill would also extend these provisions to community service organizations related to an association.

(4) Existing law defines and regulates common interest developments and authorizes the association that manages the development to levy assessments to fulfill its obligations. Existing law provides that a regular or special assessment of the association, late charges, reasonable costs of collection, and interest, as specified, are a debt of the owner of the separate interest at the time the assessment or other sums are levied, and are a lien on the owner's separate interest when the association records a specified document and follows a specified process. Existing law permits the association to enforce the lien in any manner permitted by law including a sale by a trustee, also known as nonjudicial foreclosure.

Existing law authorizes an owner of a separate interest in a common interest development to pay assessments that are in dispute in full under protest. Existing law, the right of redemption, permits a judgment debtor, as defined, to redeem his or her real property, as specified, after



judicial foreclosure only if the decree of foreclosure finds that a deficiency judgment may be ordered against the debtor.

This bill would revise and recast the procedures for collecting delinquent assessments for certain debts that arise on and after January 1, 2005. The bill would provide that when an association of a common interest development seeks to collect a delinquent assessment of less than \$2,500, not including specified late charges and fees, the association must either file a civil action in small claims court or record a lien upon which it would be prohibited from foreclosing. The bill would repeal ~~the provision~~ *provisions* authorizing the owner of a separate interest development to pay assessments that are in dispute in full under protest *and requiring the board of directors of an association to respond to an owner's written dispute of a debt within 15 days.*

The bill would permit an association of a common interest development seeking to collect a delinquent regular or special assessment of \$2,500 or more, not including specified late charges and fees, to use foreclosure subject to specified conditions. Among these conditions, the bill would require the board of directors of an association to make the decision to record a lien against a separate interest or to foreclose upon a lien at an executive meeting of the board, by a majority vote, and to record the results of the vote, as specified, and would require the board to provide notice of the decision to foreclose, as specified.

The bill would require, if the owner so requests, that the association permit the owner of the separate interest to elect *dispute resolution or alternative dispute resolution procedures*, under specified circumstances, but only if AB 1836 of the 2003–04 Regular Session is enacted. *The association would be prohibited from recording a lien or initiating a foreclosure action without participating in those procedures if so requested by the owner.* The bill would further provide that, notwithstanding any law to the contrary, a ~~nonjudicial or judicial~~ foreclosure by an association to collect upon a debt for a delinquent assessment, as specified, is subject to a right of redemption. The bill would provide a redemption period of 90 days. The bill would establish a minimum bid of 90 percent of the appraised value, exclusive of senior liens, as specified, in a judicial or nonjudicial foreclosure to collect upon a debt for a delinquent assessment, as specified. The bill would exempt from its provisions developers and separate interest owners in timeshare projects, as specified.



The bill would also authorize a homeowner's association to appear and participate in small claims court hearings through a management company representative or bookkeeper who appears on behalf of the homeowner's association.

(5) *This bill would incorporate additional changes in Sections 1365.1 and 1367.1 of the Civil Code consistent with AB 1836 that would become operative only if AB 1836 and this bill are both chaptered and become effective on or before January 1, 2005.*

(6) The bill would further specify that it shall become operative only if AB 2598 is also enacted.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1353.6 of the Civil Code is amended to~~

2 *SECTION 1. Section 1353.6 of the Civil Code is amended to*
3 *read:*

4 1353.6. (a) The governing documents, including the
5 operating rules, may not prohibit posting or displaying of
6 noncommercial signs, posters, flags, or banners on or in an
7 owner's separate interest *or within the owner's exclusive use*
8 *common area, as defined in Section 1351*, except as required for
9 the protection of public health or safety or if the posting or display
10 would violate a local, state, or federal law.

11 (b) For purposes of this section, a noncommercial sign, poster,
12 flag, or banner may be made of paper, cardboard, cloth, plastic, or
13 fabric, and may be posted or displayed from the yard, window,
14 door, balcony, or outside wall of the separate interest *or the*
15 *exclusive use common area*, but may not be made of lights,
16 roofing, siding, paving materials, flora, or balloons, or any other
17 similar building, landscaping, or decorative component, or
18 include the painting of architectural surfaces.

19 (c) An association may prohibit noncommercial signs and
20 posters that are more than 9 square feet in size and noncommercial
21 flags or banners that are more than 15 square feet in size.

22 *SEC. 2. Section 1363 of the Civil Code is amended to read:*

23 1363. (a) A common interest development shall be managed
24 by an association which may be incorporated or unincorporated.
25 The association may be referred to as a community association.

1 (b) An association, whether incorporated or unincorporated,
2 shall prepare a budget pursuant to Section 1365 and disclose
3 information, if requested, in accordance with Section 1368.

4 (c) Unless the governing documents provide otherwise, and
5 regardless of whether the association is incorporated or
6 unincorporated, the association may exercise the powers granted
7 to a nonprofit mutual benefit corporation, as enumerated in
8 Section 7140 of the Corporations Code, except that an
9 unincorporated association may not adopt or use a corporate seal
10 or issue membership certificates in accordance with Section 7313
11 of the Corporations Code.

12 The association, whether incorporated or unincorporated, may
13 exercise the powers granted to an association by Section 383 of the
14 Code of Civil Procedure and the powers granted to the association
15 in this title.

16 (d) Meetings of the membership of the association shall be
17 conducted in accordance with a recognized system of
18 parliamentary procedure or any parliamentary procedures the
19 association may adopt.

20 (e) Notwithstanding any other provision of law, notice of
21 meetings of the members shall specify those matters the board
22 intends to present for action by the members, but, except as
23 otherwise provided by law, any proper matter may be presented at
24 the meeting for action.

25 (f) (1) Members of the association shall have access to
26 association records, including accounting books and records and
27 membership lists, in accordance with Article 3 (commencing with
28 Section 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of
29 the Corporations Code. The members of the association shall have
30 the same access to the operating rules of the association as they
31 have to the accounting books and records of the association.

32 (2) *A member of the association may initiate a civil action to*
33 *enforce his or her rights under this subdivision, and upon a finding*
34 *that a request to copy or inspect was denied in violation of this*
35 *subdivision, the member shall be entitled to reasonable attorney's*
36 *fees and court costs, and the court may impose a civil penalty of*
37 *up to five hundred dollars (\$500) per violation.*

38 (g) If an association adopts or has adopted a policy imposing
39 any monetary penalty, including any fee, on any association
40 member for a violation of the governing documents or rules of the

1 association, including any monetary penalty relating to the
2 activities of a guest or invitee of a member, the board of directors
3 shall adopt and distribute to each member, by personal delivery or
4 first-class mail, a schedule of the monetary penalties that may be
5 assessed for those violations, which shall be in accordance with
6 authorization for member discipline contained in the governing
7 documents. The board of directors shall not be required to
8 distribute any additional schedules of monetary penalties unless
9 there are changes from the schedule that was adopted and
10 distributed to the members pursuant to this subdivision.

11 (h) When the board of directors is to meet to consider or impose
12 discipline upon a member, the board shall notify the member in
13 writing, by either personal delivery or first-class mail, at least 10
14 days prior to the meeting. The notification shall contain, at a
15 minimum, the date, time, and place of the meeting, the nature of
16 the alleged violation for which a member may be disciplined, and
17 a statement that the member has a right to attend and may address
18 the board at the meeting. The board of directors of the association
19 shall meet in executive session if requested by the member being
20 disciplined.

21 If the board imposes discipline on a member, the board shall
22 provide the member a written notification of the disciplinary
23 action, by either personal delivery or first-class mail, within 15
24 days following the action. A disciplinary action shall not be
25 effective against a member unless the board fulfills the
26 requirements of this subdivision.

27 (i) Whenever two or more associations have consolidated any
28 of their functions under a joint neighborhood association or similar
29 organization, members of each participating association shall be
30 entitled to attend all meetings of the joint association other than
31 executive sessions, (1) shall be given reasonable opportunity for
32 participation in those meetings and (2) shall be entitled to the same
33 access to the joint association's records as they are to the
34 participating association's records.

35 (j) Nothing in this section shall be construed to create, expand,
36 or reduce the authority of the board of directors of an association
37 to impose monetary penalties on an association member for a
38 violation of the governing documents or rules of the association.

39 *SEC. 3. Section 1365.1 of the Civil Code is amended to read:*



1365.1. (a) The association shall distribute the written notice described in subdivision (b) to each member of the association during the 60-day period immediately preceding the beginning of the association's fiscal year. The notice shall be printed in at least 12-point type. An association distributing the notice to an owner of an interest that is described in Section 11003.5 of the Business and Professions Code may delete from the notice described in subdivision (b) the portion regarding meetings and payment plans.

(b) The notice required by this section shall read as follows:

“NOTICE

ASSESSMENTS AND FORECLOSURE

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

ASSESSMENTS AND ~~NONJUDICIAL~~ FORECLOSURE

Assessments become delinquent 15 days after they are due, unless the governing documents provide for a longer time. The failure to pay association assessments may result in the loss of an owner's property through foreclosure. Foreclosure may occur either as a result of a court action, known as judicial foreclosure, or without court action, often referred to as nonjudicial foreclosure. For liens perfected on and after January 1, 2005, an association may not use judicial or nonjudicial foreclosure if the amount of the delinquent assessments or dues, exclusive of any late charges, fees, interest, and costs of collection, is less than two thousand five hundred dollars (\$2,500). For delinquent assessments or dues in excess of two thousand five hundred dollars (\$2,500), an association may use nonjudicial or judicial foreclosure subject to the conditions set forth in Section 1367.4 of the Civil Code. When using nonjudicial or judicial foreclosure, the association records a lien on the owner's property. The owner's

1 property may be sold to satisfy the lien if the lien is not paid.
2 ~~Assessments become delinquent 15 days after they are due, unless~~
3 ~~the governing documents of the association provide for a longer~~
4 ~~time.~~ (Sections 1366 and, 1367.1, and 1367.4 of the Civil Code)

5 In a nonjudicial *or* judicial foreclosure, the association may
6 recover assessments, reasonable costs of collection, reasonable
7 attorney's fees, late charges, and interest. The association may not
8 use nonjudicial *or* judicial foreclosure to collect fines or penalties,
9 except for costs to repair common areas damaged by a member or
10 a member's guests, if the governing documents provide for this.
11 (Sections 1366 and 1367.1 of the Civil Code)

12 The association must comply with the requirements of Section
13 1367.1 of the Civil Code when collecting delinquent assessments.
14 If the association fails to follow these requirements, it may not
15 record a lien on the owner's property until it has satisfied those
16 requirements. Any additional costs that result from satisfying the
17 requirements are the responsibility of the association. (Section
18 1367.1 of the Civil Code)

19 At least 30 days prior to recording a lien on an owner's separate
20 interest, the association must provide the owner of record with
21 certain documents by certified mail. Among these documents, the
22 association must send a description of its collection and lien
23 enforcement procedures and the method of calculating the
24 amount. It must also provide an itemized statement of the charges
25 owed by the owner. An owner has a right to review the
26 association's records to verify the debt. (Section 1367.1 of the
27 Civil Code)

28 If a lien is recorded against an owner's property in error, the
29 person who recorded the lien is required to record a lien release
30 within 21 days, and to provide an owner certain documents in this
31 regard. (Section 1367.1 of the Civil Code)

32 The collection practices of the association may be governed by
33 state and federal laws regarding fair debt collection. Penalties can
34 be imposed for debt collection practices that violate these laws.

35 PAYMENTS

36
37
38 When an owner makes a payment, he or she may request a
39 receipt, and the association is required to provide it. On the receipt,
40 the association must indicate the date of payment and the person

1 who received it. The association must inform owners of a mailing
2 address for overnight payments. ~~(Sections 1367.1 and (Section~~
3 ~~1367.1 of the Civil Code)~~

4 ~~An owner may dispute an assessment debt by giving the board~~
5 ~~of the association a written explanation, and the board must~~
6 ~~respond within 15 days if certain conditions are met. An owner~~
7 ~~may pay assessments that are in dispute in full under protest, and~~
8 ~~then request alternative dispute resolution. (Sections 1366.3 and~~
9 ~~1367.1 of the Civil Code)~~

10 An owner is not liable for charges, interest, and costs of
11 collection, if it is established that the assessment was paid properly
12 on time. (Section 1367.1 of the Civil Code)

14 MEETINGS AND PAYMENT PLANS

15
16 An owner of a separate interest that is not a time-share may
17 request the association to consider a payment plan to satisfy a
18 delinquent assessment. The association must inform owners of the
19 standards for payment plans, if any exist. (Section 1367.1 of the
20 Civil Code)

21 The board of the directors must meet with an owner who makes
22 a proper written request for a meeting to discuss a payment plan
23 when the owner has received a notice of a delinquent assessment.
24 These payment plans must conform with the payment plan
25 standards of the association, if they exist. (Section 1367.1 of the
26 Civil Code)”

27 *SEC. 3.5. Section 1365.1 of the Civil Code is amended to*
28 *read:*

29 1365.1. (a) The association shall distribute the written notice
30 described in subdivision (b) to each member of the association
31 during the 60-day period immediately preceding the beginning of
32 the association’s fiscal year. The notice shall be printed in at least
33 12-point type. An association distributing the notice to an owner
34 of an interest that is described in Section 11003.5 of the Business
35 and Professions Code may delete from the notice described in
36 subdivision (b) the portion regarding meetings and payment plans.

37 (b) The notice required by this section shall read as follows:

38
39 “NOTICE
40

1 ASSESSMENTS AND FORECLOSURE

2
3 This notice outlines some of the rights and responsibilities of
4 owners of property in common interest developments and the
5 associations that manage them. Please refer to the sections of the
6 Civil Code indicated for further information. A portion of the
7 information in this notice applies only to liens recorded on or after
8 January 1, 2003. You may wish to consult a lawyer if you dispute
9 an assessment.

10
11 ASSESSMENTS AND ~~NONJUDICIAL~~ FORECLOSURE

12
13 *Assessments become delinquent 15 days after they are due,*
14 *unless the governing documents provide for a longer time. The*
15 *failure to pay association assessments may result in the loss of an*
16 *owner's property through foreclosure. Foreclosure may occur*
17 *either as a result of a court action, known as judicial foreclosure,*
18 *or without court action, often referred to as nonjudicial*
19 *foreclosure. ~~When using nonjudicial~~ For liens perfected on and*
20 *after January 1, 2005, an association may not use judicial or*
21 *nonjudicial foreclosure if the amount of the delinquent*
22 *assessments or dues, exclusive of any late charges, fees, interest,*
23 *and costs of collection, is less than two thousand five hundred*
24 *dollars (\$2,500). For delinquent assessments or dues in excess of*
25 *two thousand five hundred dollars (\$2,500), an association may*
26 *use nonjudicial or judicial foreclosure subject to the conditions set*
27 *forth in Section 1367.4 of the Civil Code. When using nonjudicial*
28 *or judicial foreclosure, the association records a lien on the*
29 *owner's property. The owner's property may be sold to satisfy the*
30 *lien if the lien is not paid. ~~Assessments become delinquent 15 days~~*
31 *~~after they are due, unless the governing documents of the~~*
32 *~~association provide for a longer time.~~ (Sections 1366 and, 1367.1,*
33 *and 1367.4 of the Civil Code)*

34 In a nonjudicial *or judicial* foreclosure, the association may
35 recover assessments, reasonable costs of collection, reasonable
36 attorney's fees, late charges, and interest. The association may not
37 use nonjudicial *or judicial* foreclosure to collect fines or penalties,
38 except for costs to repair common areas damaged by a member or
39 a member's guests, if the governing documents provide for this,
40 *nor may the association use nonjudicial or judicial foreclosure to*

1 *collect debts for delinquent assessments under two thousand five*
 2 *hundred dollars (\$2,500), not including late charges and certain*
 3 *fees. (Sections 1366 and 1367.1 of the Civil Code)*

4 The association must comply with the requirements of Section
 5 1367.1 of the Civil Code when collecting delinquent assessments.
 6 If the association fails to follow these requirements, it may not
 7 record a lien on the owner's property until it has satisfied those
 8 requirements. Any additional costs that result from satisfying the
 9 requirements are the responsibility of the association. (Section
 10 1367.1 of the Civil Code)

11 At least 30 days prior to recording a lien on an owner's separate
 12 interest, the association must provide the owner of record with
 13 certain documents by certified mail. Among these documents, the
 14 association must send a description of its collection and lien
 15 enforcement procedures and the method of calculating the
 16 amount. It must also provide an itemized statement of the charges
 17 owed by the owner. An owner has a right to review the
 18 association's records to verify the debt. (Section 1367.1 of the
 19 Civil Code)

20 If a lien is recorded against an owner's property in error, the
 21 person who recorded the lien is required to record a lien release
 22 within 21 days, and to provide an owner certain documents in this
 23 regard. (Section 1367.1 of the Civil Code)

24 The collection practices of the association may be governed by
 25 state and federal laws regarding fair debt collection. Penalties can
 26 be imposed for debt collection practices that violate these laws.

PAYMENTS

27
 28
 29
 30 When an owner makes a payment, he or she may request a
 31 receipt, and the association is required to provide it. On the receipt,
 32 the association must indicate the date of payment and the person
 33 who received it. The association must inform owners of a mailing
 34 address for overnight payments. ~~(Sections 1367.1 and~~ (Section
 35 1367.1 of the Civil Code)

36 An owner may dispute an assessment debt by ~~giving the board~~
 37 ~~of the association a written explanation, and the board must~~
 38 ~~respond within 15 days if certain conditions are met. An owner~~
 39 ~~may pay assessments that are in dispute in full under protest, and~~
 40 ~~then request alternative dispute resolution. (Sections 1366.3 and~~

~~1367.1 of the Civil Code)~~ submitting a written request for dispute resolution to the association as set forth in Article 5 (commencing with Section 1368.810) of Chapter 4 of Title 6 of Division 2 of the Civil Code. In addition, an association may not record a lien or initiate a foreclosure without participating in alternative dispute resolution with a neutral third party as set forth in Article 2 (commencing with Section 1369.510) of Chapter 7 of Title 6 of Division 2 of the Civil Code, if so requested by the owner.

An owner is not liable for charges, interest, and costs of collection, if it is established that the assessment was paid properly on time. (Section 1367.1 of the Civil Code)

MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a time-share may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exist. (Section 1367.1 of the Civil Code)

The board of the directors must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment plans must conform with the payment plan standards of the association, if they exist. (Section 1367.1 of the Civil Code)”

SEC. 4. Section 1365.2 of the Civil Code is amended to read:

1365.2. (a) (1) The association shall make ~~the accounting books and records and the minutes of proceedings of the association~~ available for inspection and copying by a member of the association, or the member’s designated representative, as provided by this section, *all association records, including, but not limited to, accounting books and records, agendas and minutes of meetings of the governing board of the association, and agendas and minutes of meetings of association committees. The provisions of the section shall apply to any community service organization or similar entity, as defined in paragraph (3) of subdivision (c) of Section 1368, that is related to the association, and the section shall operate to give a member of the community service organization or similar entity a right to inspect and copy the*

1 *records of that organization or entity equivalent to that granted to*
2 *association members by this section.*

3 (2) A member of the association may designate another person
4 to inspect and copy the ~~accounting books and~~ *association* records
5 ~~and the minutes of proceedings~~ on the member's behalf. The
6 member shall make this designation in writing.

7 (b) (1) The association shall make the ~~accounting books and~~
8 *association* records ~~and the minutes of proceedings~~ available for
9 inspection and copying in the association's business office within
10 the common interest development.

11 (2) If the association does not have a business office within the
12 development, the association shall make the ~~accounting books and~~
13 *association* records ~~and minutes of proceedings~~ available for
14 inspection and copying at a place that the requesting member and
15 the association agree upon.

16 (3) If the association and the requesting member cannot agree
17 upon a place for inspection and copying pursuant to paragraph (2),
18 or if the requesting member submits a written request directly to
19 the association for copies, the association may satisfy the
20 requirement to make the ~~accounting books and~~ *association* records
21 ~~and the minutes of proceedings~~ available for inspection and
22 copying by mailing copies of the requested records to the member
23 by first-class mail within 10 days of receiving the member's
24 request. The association may bill the requesting member for its
25 actual, reasonable costs for copying and mailing requested
26 documents. The association shall inform the member of the
27 amount of the copying and mailing costs before sending the
28 requested documents.

29 (c) (1) Except as provided in paragraph (2), the association
30 may withhold or redact information from the ~~accounting books~~
31 ~~and association~~ records ~~and the minutes of proceedings~~ for any of
32 the following reasons:

33 (A) The release of the information is reasonably likely to lead
34 to identity theft. For the purposes of this section, "identity theft"
35 means the unauthorized use of another person's personal
36 identifying information to obtain credit, goods, services, money,
37 or property.

38 (B) The release of the information is reasonably likely to lead
39 to fraud in connection with the association.

40 (C) The information is privileged under law.

(2) Except as provided by the attorney-client privilege, the association may not withhold or redact information concerning the compensation paid to employees, vendors, or contractors. Compensation information for individual employees shall be set forth by job classification or title, not by the employee's name, social security number, or other personal information.

(d) (1) ~~The accounting books and records and the minutes of proceedings of an association;~~ *records* and any information from them, may not be sold, used for a commercial purpose, or used for any other purpose not reasonably related to a member's interest as a member. An association may bring an action against any person who violates this section for injunctive relief and for actual damages to the association caused by the violation.

(2) This section may not be construed to limit the right of an association to damages for misuse of information obtained from ~~the accounting books and association records and the minutes of proceedings~~ pursuant to this section or to limit the right of an association to injunctive relief to stop the misuse of this information.

(3) An association shall be entitled to recover reasonable costs and expenses, including reasonable attorney's fees, in a successful action to enforce its rights under this section.

(e) A member of an association may bring an action to enforce the member's right to inspect and copy ~~the accounting books and records and the minutes of proceedings of the association~~ *records*. If a court finds that the association unreasonably withheld access to ~~the accounting books and association records and the minutes of proceedings~~, the court shall award the member reasonable costs and expenses, including reasonable attorney's fees, and may assess a civil penalty of up to five hundred dollars (\$500) for each violation.

(f) *For the purposes of this section "association records" includes, but is not limited to, signed contracts to which the association is or has been a party or where association assessments provide payment for services, invoices, receipts, check registers, canceled checks, purchase orders, accounting statements, bank statements, any document that can be used to verify any financial report issued by the association or its auditor, and common area maintenance records.*

(g) *The association may charge a fee to the requesting member, which fee shall not exceed the association's reasonable cost to copy the requested records of the association.*

SEC. 5. Section 1366.3 of the Civil Code is repealed.

~~1366.3.—(a) The exception for disputes related to association assessments in subdivision (b) of Section 1354 shall not apply if, in a dispute between the owner of a separate interest and the association regarding the assessments imposed by the association, the owner of the separate interest chooses to pay in full to the association all of the charges listed in paragraphs (1) to (4), inclusive, and states by written notice that the amount is paid under protest, and the written notice is mailed by certified mail not more than 30 days from the recording of a notice of delinquent assessment in accordance with Section 1367 or 1367.1; and in those instances, the association shall inform the owner that the owner may resolve the dispute through alternative dispute resolution as set forth in Section 1354, civil action, and any other procedures to resolve the dispute that may be available through the association.~~

~~(1) The amount of the assessment in dispute.~~

~~(2) Late charges.~~

~~(3) Interest.~~

~~(4) All reasonable fees and costs associated with the preparation and filing of a notice of delinquent assessment, including all mailing costs, and including reasonable attorney's fees not to exceed four hundred twenty-five dollars (\$425).~~

~~(b) The right of any owner of a separate interest to utilize alternative dispute resolution under this section may not be exercised more than two times in any single calendar year, and not more than three times within any five calendar years. Nothing within this section shall preclude any owner of a separate interest and the association, upon mutual agreement, from entering into alternative dispute resolution for a number of times in excess of the limits set forth in this section. The owner of a separate interest may request and be awarded through alternative dispute resolution reasonable interest to be paid by the association on the total amount paid under paragraphs (1) to (4), inclusive, of subdivision (a), if it is determined through alternative dispute resolution that the assessment levied by the association was not correctly levied.~~

SEC. 6. Section 1367.1 of the Civil Code is amended to read:

1 1367.1. (a) A regular or special assessment and any late
2 charges, reasonable fees and costs of collection, reasonable
3 attorney's fees, if any, and interest, if any, as determined in
4 accordance with Section 1366, shall be a debt of the owner of the
5 separate interest at the time the assessment or other sums are
6 levied. At least 30 days prior to recording a lien upon the separate
7 interest of the owner of record to collect a debt that is past due
8 under this subdivision, the association shall notify the owner of
9 record in writing by certified mail of the following:

10 (1) A general description of the collection and lien enforcement
11 procedures of the association and the method of calculation of the
12 amount, a statement that the owner of the separate interest has the
13 right to inspect the association records, pursuant to Section 8333
14 of the Corporations Code, and the following statement in 14-point
15 boldface type, if printed, or in capital letters, if typed:
16 "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS
17 PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND
18 IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT
19 COURT ACTION". ACTION."

20 (2) An itemized statement of the charges owed by the owner,
21 including items on the statement which indicate the amount of any
22 delinquent assessments, the fees and reasonable costs of
23 collection, reasonable attorney's fees, any late charges, and
24 interest, if any.

25 (3) A statement that the owner shall not be liable to pay the
26 charges, interest, and costs of collection, if it is determined the
27 assessment was paid on time to the association.

28 (4) The right to request a meeting with the board as provided
29 by subdivision (c).

30 (b) Any payments made by the owner of a separate interest
31 toward the debt set forth, as required in subdivision (a), shall first
32 be applied to the assessments owed, and, only after the assessments
33 owed are paid in full shall the payments be applied to the fees and
34 costs of collection, attorney's fees, late charges, or interest. When
35 an owner makes a payment, the owner may request a receipt and
36 the association shall provide it. The receipt shall indicate the date
37 of payment and the person who received it. The association shall
38 provide a mailing address for overnight payment of assessments.

39 ~~(c) (1) An owner may dispute the debt noticed pursuant to~~
40 ~~subdivision (a) by submitting to the board a written explanation of~~

1 ~~the reasons for his or her dispute. The board shall respond in~~
2 ~~writing to the owner within 15 days of the date of the postmark of~~
3 ~~the explanation, if the explanation is mailed within 15 days of the~~
4 ~~postmark of the notice.~~

5 (2) An owner, other than an owner of any interest that is
6 described in Section 11003.5 of the Business and Professions
7 Code, may submit a written request to meet with the board to
8 discuss a payment plan for the debt noticed pursuant to subdivision
9 (a). The association shall provide the owners the standards for
10 payment plans, if any exist. The board shall meet with the owner
11 in executive session within 45 days of the postmark of the request,
12 if the request is mailed within 15 days of the date of the postmark
13 of the notice, unless there is no regularly scheduled board meeting
14 within that period, in which case the board may designate a
15 committee of one or more members to meet with the owner.

16 (d) The amount of the assessment, plus any costs of collection,
17 late charges, and interest assessed in accordance with Section
18 1366, shall be a lien on the owner's interest in the common interest
19 development from and after the time the association causes to be
20 recorded with the county recorder of the county in which the
21 separate interest is located, a notice of delinquent assessment,
22 which shall state the amount of the assessment and other sums
23 imposed in accordance with Section 1366, a legal description of
24 the owner's interest in the common interest development against
25 which the assessment and other sums are levied, the name of the
26 record owner of the owner's interest in the common interest
27 development against which the lien is imposed. In order for the
28 lien to be enforced by nonjudicial foreclosure as provided in
29 subdivision (g), the notice of delinquent assessment shall state the
30 name and address of the trustee authorized by the association to
31 enforce the lien by sale. The notice of delinquent assessment shall
32 be signed by the person designated in the declaration or by the
33 association for that purpose, or if no one is designated, by the
34 president of the association, and mailed in the manner set forth in
35 Section 2924b, to all record owners of the owner's interest in the
36 common interest development no later than 10 calendar days after
37 recordation. Within 21 days of the payment of the sums specified
38 in the notice of delinquent assessment, the association shall record
39 or cause to be recorded in the office of the county recorder in which
40 the notice of delinquent assessment is recorded a lien release or

1 notice of rescission and provide the owner of the separate interest
2 a copy of the lien release or notice that the delinquent assessment
3 has been satisfied. A monetary charge imposed by the association
4 as a means of reimbursing the association for costs incurred by the
5 association in the repair of damage to common areas and facilities
6 for which the member or the member's guests or tenants were
7 responsible may become a lien against the member's separate
8 interest enforceable by the sale of the interest under Sections 2924,
9 2924b, and 2924c, provided the authority to impose a lien is set
10 forth in the governing documents. It is the intent of the Legislature
11 not to contravene Section 2792.26 of Title 10 of the California
12 Code of Regulations, as that section appeared on January 1, 1996,
13 for associations of subdivisions that are being sold under authority
14 of a subdivision public report, pursuant to Part 2 (commencing
15 with Section 11000) of Division 4 of the Business and Professions
16 Code.

17 (e) Except as indicated in subdivision (d), a monetary penalty
18 imposed by the association as a disciplinary measure for failure of
19 a member to comply with the governing instruments, except for
20 the late payments, may not be characterized nor treated in the
21 governing instruments as an assessment that may become a lien
22 against the member's subdivision separate interest enforceable by
23 the sale of the interest under Sections 2924, 2924b, and 2924c.

24 (f) A lien created pursuant to subdivision (d) shall be prior to
25 all other liens recorded subsequent to the notice of assessment,
26 except that the declaration may provide for the subordination
27 thereof to any other liens and encumbrances.

28 (g) An association may not voluntarily assign or pledge the
29 association's right to collect payments or assessments, or to
30 enforce or foreclose a lien to a third party, except when the
31 assignment or pledge is made to a financial institution or lender
32 chartered or licensed under federal or state law, when acting within
33 the scope of that charter or license, as security for a loan obtained
34 by the association; however, the foregoing provision may not
35 restrict the right or ability of an association to assign any unpaid
36 obligations of a former member to a third party for purposes of
37 collection. Subject to the limitations of this subdivision, after the
38 expiration of 30 days following the recording of a lien created
39 pursuant to subdivision (d), the lien may be enforced in any
40 manner permitted by law, including sale by the court, sale by the

trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a. Any sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts. The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d.

(h) Nothing in this section or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is created pursuant to this section or prohibits an association from taking a deed in lieu of foreclosure.

(i) If it is determined that a lien previously recorded against the separate interest was recorded in error, the party who recorded the lien shall, within 21 calendar days, record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(j) (1) An association that fails to comply with the procedures set forth in this section shall, prior to recording a lien, recommence the required notice process.

(2) Any costs associated with recommencing the notice process shall be borne by the association and not by the owner of a separate interest.

(k) This section only applies to liens recorded on or after January 1, 2003.

(l) *This section is subordinate to, and shall be interpreted in conformity with, Section 1367.4.*

SEC. 6.5. *Section 1367.1 of the Civil Code is amended to read:*

1367.1. (a) A regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorney's fees, if any, and interest, if any, as determined in accordance with Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. At least 30 days prior to recording a lien upon the separate interest of the owner of record to collect a debt that is past due under this subdivision, the association shall notify the owner of record in writing by certified mail of the following:

1 (1) A general description of the collection and lien enforcement
2 procedures of the association and the method of calculation of the
3 amount, a statement that the owner of the separate interest has the
4 right to inspect the association records, pursuant to Section 8333
5 of the Corporations Code, and the following statement in 14-point
6 boldface type, if printed, or in capital letters, if typed:
7 “IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS
8 PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND
9 IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT
10 COURT ACTION”. ACTION.”

11 (2) An itemized statement of the charges owed by the owner,
12 including items on the statement which indicate the amount of any
13 delinquent assessments, the fees and reasonable costs of
14 collection, reasonable attorney’s fees, any late charges, and
15 interest, if any.

16 (3) A statement that the owner shall not be liable to pay the
17 charges, interest, and costs of collection, if it is determined the
18 assessment was paid on time to the association.

19 (4) The right to request a meeting with the board as provided
20 by subdivision (c).

21 (5) *The right to dispute the assessment debt by submitting a*
22 *written request for dispute resolution to the association pursuant*
23 *to Article 5 (commencing with Section 1363.810) of Chapter 4 of*
24 *Title 6 of Part 4 of Division 2 of the Civil Code.*

25 (6) *The right to request alternative dispute resolution with a*
26 *neutral third party pursuant to Article 2 (commencing with Section*
27 *1369.510) of Chapter 7 of Part 4 of Division 2 of the Civil Code*
28 *before the association may record a lien or initiate foreclosure*
29 *against the owner’s separate interest.*

30 (b) Any payments made by the owner of a separate interest
31 toward the debt set forth, as required in subdivision (a), shall first
32 be applied to the assessments owed, and, only after the assessments
33 owed are paid in full shall the payments be applied to the fees and
34 costs of collection, attorney’s fees, late charges, or interest. When
35 an owner makes a payment, the owner may request a receipt and
36 the association shall provide it. The receipt shall indicate the date
37 of payment and the person who received it. The association shall
38 provide a mailing address for overnight payment of assessments.

39 (c) (1) ~~An owner may dispute the debt noticed pursuant to~~
40 ~~subdivision (a) by submitting to the board a written explanation of~~



~~the reasons for his or her dispute. The board shall respond in writing to the owner within 15 days of the date of the postmark of the explanation, if the explanation is mailed within 15 days of the postmark of the notice. Prior to recording a lien or initiating a foreclosure for delinquent assessments, an association shall participate in dispute resolution pursuant to Article 5 (commencing with Section 1363.810) of Chapter 4 of Title 6 of Part 4 of Division 2 of the Civil Code or alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7 of Title 6 of Part 4 of Division 2 of the Civil Code if so requested by the owner.~~

(2) An owner, other than an owner of any interest that is described in Section 11003.5 of the Business and Professions Code, may submit a written request to meet with the board to discuss a payment plan for the debt noticed pursuant to subdivision (a). The association shall provide the owners the standards for payment plans, if any exist. The board shall meet with the owner in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the date of the postmark of the notice, unless there is no regularly scheduled board meeting within that period, in which case the board may designate a committee of one or more members to meet with the owner.

(d) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366, shall be a lien on the owner's interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Section 1366, a legal description of the owner's interest in the common interest development against which the assessment and other sums are levied, the name of the record owner of the owner's interest in the common interest development against which the lien is imposed. In order for the lien to be enforced by nonjudicial foreclosure as provided in subdivision (g), the notice of delinquent assessment shall state the name and address of the trustee authorized by the association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the

1 president of the association, and mailed in the manner set forth in
2 Section 2924b, to all record owners of the owner's interest in the
3 common interest development no later than 10 calendar days after
4 recordation. Within 21 days of the payment of the sums specified
5 in the notice of delinquent assessment, the association shall record
6 or cause to be recorded in the office of the county recorder in which
7 the notice of delinquent assessment is recorded a lien release or
8 notice of rescission and provide the owner of the separate interest
9 a copy of the lien release or notice that the delinquent assessment
10 has been satisfied. A monetary charge imposed by the association
11 as a means of reimbursing the association for costs incurred by the
12 association in the repair of damage to common areas and facilities
13 for which the member or the member's guests or tenants were
14 responsible may become a lien against the member's separate
15 interest enforceable by the sale of the interest under Sections 2924,
16 2924b, and 2924c, provided the authority to impose a lien is set
17 forth in the governing documents. It is the intent of the Legislature
18 not to contravene Section 2792.26 of Title 10 of the California
19 Code of Regulations, as that section appeared on January 1, 1996,
20 for associations of subdivisions that are being sold under authority
21 of a subdivision public report, pursuant to Part 2 (commencing
22 with Section 11000) of Division 4 of the Business and Professions
23 Code.

24 (e) Except as indicated in subdivision (d), a monetary penalty
25 imposed by the association as a disciplinary measure for failure of
26 a member to comply with the governing instruments, except for
27 the late payments, may not be characterized nor treated in the
28 governing instruments as an assessment that may become a lien
29 against the member's subdivision separate interest enforceable by
30 the sale of the interest under Sections 2924, 2924b, and 2924c.

31 (f) A lien created pursuant to subdivision (d) shall be prior to
32 all other liens recorded subsequent to the notice of assessment,
33 except that the declaration may provide for the subordination
34 thereof to any other liens and encumbrances.

35 (g) An association may not voluntarily assign or pledge the
36 association's right to collect payments or assessments, or to
37 enforce or foreclose a lien to a third party, except when the
38 assignment or pledge is made to a financial institution or lender
39 chartered or licensed under federal or state law, when acting within
40 the scope of that charter or license, as security for a loan obtained

by the association; however, the foregoing provision may not restrict the right or ability of an association to assign any unpaid obligations of a former member to a third party for purposes of collection. Subject to the limitations of this subdivision, after the expiration of 30 days following the recording of a lien created pursuant to subdivision (d), the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a. Any sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts. The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d.

(h) Nothing in this section or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is created pursuant to this section or prohibits an association from taking a deed in lieu of foreclosure.

(i) If it is determined that a lien previously recorded against the separate interest was recorded in error, the party who recorded the lien shall, within 21 calendar days, record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(j) (1) An association that fails to comply with the procedures set forth in this section shall, prior to recording a lien, recommence the required notice process.

(2) Any costs associated with recommencing the notice process shall be borne by the association and not by the owner of a separate interest.

(k) This section only applies to liens recorded on or after January 1, 2003.

(l) *This section is subordinate to, and shall be interpreted in conformity with, Section 1367.4.*

SEC. 7. *Section 1367.4 is added to the Civil Code, to read:*

1367.4. (a) *Notwithstanding any law or any provisions of the governing documents to the contrary, this section shall apply to debts for assessments that arise on and after January 1, 2005.*

1 (b) An association that seeks to collect a delinquent regular or
2 special assessment of an amount less than two thousand five
3 hundred dollars (\$2,500), not including any late charges, fees and
4 costs of collection, or interest, may not collect that debt through
5 nonjudicial or judicial foreclosure, but may attempt to collect that
6 debt in any of the following ways:

7 (1) By a civil action in small claims court, pursuant to Chapter
8 5.5 (commencing with Section 116.110) of Title 1 of the Code of
9 Civil Procedure. An association that chooses to proceed by an
10 action in small claims court, and prevails, may enforce the
11 judgment as permitted under Article 8 (commencing with Section
12 116.810) of Title 1 of the Code of Civil Procedure. The amount that
13 may be recovered in small claims court to collect upon a debt for
14 delinquent assessments may not exceed the jurisdictional limits of
15 the small claims court and shall be the sum of the following:

16 (A) The amount owed as of the date of filing the complaint in
17 the small claims court proceeding.

18 (B) In the discretion of the court, an additional amount
19 described in subparagraph (A) equal to the amount owed for the
20 period from the date the complaint is filed until the estimated date
21 of judgment.

22 (2) By recording a lien on the owner's separate interest upon
23 which the association may not foreclose. If requested by the owner
24 of a separate interest whom the association asserts is delinquent
25 in paying assessments, an association that chooses to record a lien
26 under these provisions, prior to recording the lien, shall
27 participate in dispute resolution as set forth in Article 5
28 (commencing with Section 1368.810) of Chapter 4 or alternative
29 dispute resolution as set forth in Article 2 (commencing with
30 Section 1369.510) of Chapter 7. This procedure shall apply only
31 if Assembly Bill 1836 of the 2003–04 Regular Session is enacted.

32 (3) Any other manner provided by law, except for nonjudicial
33 or judicial foreclosure.

34 (c) An association that seeks to collect a delinquent regular or
35 special assessment of an amount of two thousand five hundred
36 dollars (\$2,500) or more, not including any late charges, fees and
37 costs of collection, or interest, may use nonjudicial or judicial
38 foreclosure subject to the following conditions:

39 (1) The decision to record a lien for a delinquent assessment
40 shall be made only by the board of directors of the association and

1 may not be delegated to an agent of the association. The board
2 shall approve the decision by a majority vote of the board members
3 in an open session. The board shall record the vote in the minutes
4 of that meeting.

5 (2) If requested by the owner of a separate interest whom the
6 association asserts is delinquent in paying assessments, prior to
7 recording any lien on an owner's separate interest, the association
8 shall participate in dispute resolution as set forth in Article 5
9 (commencing with Section 1368.810) of Chapter 4 or alternative
10 dispute resolution as set forth in Article 2 (commencing with
11 Section 1369.510) of Chapter 7. This procedure shall apply only
12 if Assembly Bill 1836 of the 2003–04 Regular Session is enacted.

13 (3) The decision to foreclose upon a lien for a delinquent
14 assessment that has been validly recorded shall be made only by
15 the board of directors of the association and may not be delegated
16 to an agent of the association. The board shall approve the
17 decision by a majority vote of the board members in an executive
18 session. The board shall record the vote in the minutes of that
19 meeting. The board shall maintain the confidentiality of the owner
20 or owners of the separate interest by identifying the matter by the
21 parcel number of the property, rather than the name of the owner
22 or owners.

23 (4) The board shall provide personal notice to an owner of a
24 separate interest who occupies the separate interest if the board
25 votes to foreclose upon the separate interest. The board shall
26 provide written notice to an owner of a separate interest who does
27 not occupy the separate interest by first-class mail, postage
28 prepaid, at the most current address shown on the books of the
29 association.

30 (5) A nonjudicial foreclosure by an association to collect upon
31 a debt for delinquent assessments shall be subject to a right of
32 redemption. The redemption period within which the separate
33 interest may be redeemed from a foreclosure sale under this
34 paragraph ends 90 days after the sale.

35 (6) A nonjudicial or judicial foreclosure by an association to
36 collect upon a debt for delinquent assessments shall comply with
37 the following requirements:

38 (A) The minimum bid shall be at least 90 percent of the
39 appraised value, excluding any senior liens subject to which the
40 successful bidder would be taking title.

1 (B) An appraiser appropriately certified by the Office of Real
2 Estate Appraisers shall perform the exterior appraisal (using
3 Form 2055 Exterior Only Appraisal). The cost of the appraisal
4 shall be recouped at sale if the property is auctioned or at cure of
5 the default prior to sale.

6 (d) This section does not apply to the debts of owners of
7 separate interests in timeshare projects, as defined in Section
8 11003.5 of the Business and Professions Code, or to the debts of
9 developers.

10 SEC. 8. Section 116.540 of the Code of Civil Procedure is
11 amended to read:

12 116.540. (a) Except as permitted by this section, no
13 individual other than the plaintiff and the defendant may take part
14 in the conduct or defense of a small claims action.

15 (b) A corporation may appear and participate in a small claims
16 action only through a regular employee, or a duly appointed or
17 elected officer or director, who is employed, appointed, or elected
18 for purposes other than solely representing the corporation in
19 small claims court.

20 (c) A party who is not a corporation or a natural person may
21 appear and participate in a small claims action only through a
22 regular employee, or a duly appointed or elected officer or
23 director, or in the case of a partnership, a partner, engaged for
24 purposes other than solely representing the party in small claims
25 court.

26 (d) If a party is an individual doing business as a sole
27 proprietorship, the party may appear and participate in a small
28 claims action by a representative and without personally appearing
29 if both of the following conditions are met:

30 (1) The claim can be proved or disputed by evidence of an
31 account that constitutes a business record as defined in Section
32 1271 of the Evidence Code, and there is no other issue of fact in
33 the case.

34 (2) The representative is a regular employee of the party for
35 purposes other than solely representing the party in small claims
36 actions and is qualified to testify to the identity and mode of
37 preparation of the business record.

38 (e) A plaintiff is not required to personally appear, and may
39 submit declarations to serve as evidence supporting his or her
40 claim or allow another individual to appear and participate on his

or her behalf, if (1) the plaintiff is serving on active duty in the United States ~~armed forces~~ *Armed Forces* outside this state, (2) the plaintiff was assigned to his or her duty station after his or her claim arose, (3) the assignment is for more than six months, (4) the representative is serving without compensation, and (5) the representative has appeared in small claims actions on behalf of others no more than four times during the calendar year. The defendant may file a claim in the same action in an amount not to exceed the jurisdictional limits stated in Sections 116.220 and 116.231.

(f) A party incarcerated in a county jail, a Department of Corrections facility, or a Youth Authority facility is not required to personally appear, and may submit declarations to serve as evidence supporting his or her claim, or may authorize another individual to appear and participate on his or her behalf if that individual is serving without compensation and has appeared in small claims actions on behalf of others no more than four times during the calendar year.

(g) A defendant who is a nonresident owner of real property may defend against a claim relating to that property without personally appearing by (1) submitting written declarations to serve as evidence supporting his or her defense, (2) allowing another individual to appear and participate on his or her behalf if that individual is serving without compensation and has appeared in small claims actions on behalf of others no more than four times during the calendar year, or (3) taking the action described in both (1) and (2).

(h) A party who is an owner of rental real property may appear and participate in a small claims action through a property agent under contract with the owner to manage the rental of that property, if (1) the owner has retained the property agent principally to manage the rental of that property and not principally to represent the owner in small claims court, and (2) the claim relates to the rental property.

(i) *A party who is a homeowner's association of a common interest development may appear and participate in a small claims action through a management company representative or bookkeeper who appears on behalf of that homeowner's association.*

1 (j) At the hearing of a small claims action, the court shall
2 require any individual who is appearing as a representative of a
3 party under subdivisions (b) to ~~(h)~~ (i), inclusive, to file a
4 declaration stating (1) that the individual is authorized to appear
5 for the party, and (2) the basis for that authorization. If the
6 representative is appearing under subdivision (b), (c), (d), or ~~(h)~~
7 (i), the declaration also shall state that the individual is not
8 employed solely to represent the party in small claims court. If the
9 representative is appearing under subdivision (e), (f), or (g), the
10 declaration also shall state that the representative is serving
11 without compensation, and has appeared in small claims actions
12 on behalf of others no more than four times during the calendar
13 year.

14 ~~(j)~~

15 (k) A husband or wife who sues or who is sued with his or her
16 spouse may appear and participate on behalf of his or her spouse
17 if (1) the claim is a joint claim, (2) the represented spouse has given
18 his or her consent, and (3) the court determines that the interests
19 of justice would be served.

20 ~~(k)~~

21 (l) If the court determines that a party cannot properly present
22 his or her claim or defense and needs assistance, the court may in
23 its discretion allow another individual to assist that party.

24 ~~(l)~~

25 (m) Nothing in this section shall operate or be construed to
26 authorize an attorney to participate in a small claims action except
27 as expressly provided in Section 116.530.

28 SEC. 9. Section 729.035 is added to the Code of Civil
29 Procedure, to read:

30 729.035. Notwithstanding any provision of law to the
31 contrary, the sale of a separate interest in a common interest
32 development is subject to the right of redemption within 90 days
33 after the sale if the sale arises from a foreclosure by the association
34 of a common interest development pursuant to subdivision (g) of
35 Section 1367.1 of the Civil Code, subject to the conditions of
36 Section 1367.4 of the Civil Code.

37 SEC. 10. Section 3.5 of this bill incorporates amendments to
38 Section 1365.1 of the Civil Code to reference new provisions of the
39 Civil Code, as added by AB 1836. It shall only become operative
40 if both bills are enacted and become effective on or before January

1 1, 2005, in which event Section 3 of this bill shall not become
2 operative.

3 SEC. 11. Section 6.5 of this bill incorporates amendments to
4 Section 1367.1 of the Civil Code to reference new provisions of the
5 Civil Code, as added by AB 1836. It shall only become operative
6 if both bills are enacted and become effective on or before January
7 1, 2005, in which event Section 6 of this bill shall not become
8 operative.

9 SEC. 12. This act shall become operative only if Assembly Bill
10 2598 of the 2003–04 Regular Session is enacted.

11
12
13 **All matter omitted in this version of the**
14 **bill appears in the bill as amended in the**
15 **Assembly, June 30, 2004. (JR 11)**
16
17

